

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENDALL GUINN,	§	
	§	No. 776, 2010
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	Cr. ID Nos. 0109014778
Plaintiff Below,	§	0112002560
Appellee.	§	

Submitted: February 3, 2011

Decided: March 28, 2011

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 28th day of March 2011, upon consideration of the appellant’s opening brief and the appellee’s motion to affirm, it appears to the Court that:

(1) The appellant, Kendall Guinn, filed this appeal from the Superior Court’s December 9, 2010 denial of his third motion for modification of sentence under Superior Court Criminal Rule 35(b) (“Rule 35(b)”). The appellee, State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In 2002, Guinn pled guilty to three offenses, including Burglary in the Second Degree. As part of the plea agreement, Guinn agreed to be sentenced as a habitual criminal for the burglary conviction.²

(3) Guinn was sentenced to ten years at Level V for the burglary conviction and to one year at Level V for each of the other convictions. Guinn did not appeal. Guinn also did not appeal from the Superior Court's April 23, 2010 denial of his first and second motions for modification of sentence under Rule 35(b).³

(4) On November 24, 2010, Guinn filed his third motion for sentence modification under Rule 35(b). By order dated December 9, 2010, the Superior Court summarily denied the motion as time-barred, among other reasons.⁴

¹ Del. Supr. Ct. R. 25(a).

² See Del. Code Ann. tit. 11, § 4214(a) (2007) (providing for a sentence of up to life imprisonment for qualifying offenders).

³ Guinn's first motion, filed *pro se* on April 8, 2009, and second motion, filed by counsel on April 1, 2010, sought a modification of sentence based on Guinn's accomplishments and exemplary record while incarcerated. The Court notes that it is within the discretion of the Department of Correction to apply for a modification of sentence based on an offender's "exceptional rehabilitation." Del. Code Ann. tit. 11, § 4217 (2007 & Supp. 2010); Del. Super. Ct. R. 35(b).

⁴ The other reasons given were: the sentence was imposed pursuant to a plea agreement, was appropriate for all the reasons stated at sentencing, and because Guinn had been declared a habitual offender.

(5) This Court reviews the Superior Court’s denial of a motion for modification of sentence for abuse of discretion.⁵ Having carefully reviewed the parties’ positions on appeal, we can discern no error or abuse of discretion in the Superior Court’s denial of Guinn’s third motion for modification of sentence as time-barred.⁶ Moreover, Guinn’s motion was repetitive, which also precluded its consideration by the Superior Court.⁷

NOW, THEREFORE, IT IS ORDERED that the State’s motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁵ *Hickman v. State*, 2003 WL 22669335 (Del. Supr.) (citing *Shy v. State*, 246 A.2d 926, 927 (Del. 1968)).

⁶ A motion for modification of sentence under Rule 35(b) must be filed within ninety days of sentencing. Del. Super. Ct. Crim. R. 35(b).

⁷ “The court will not consider repetitive requests for reduction of sentence.” Del. Super. Ct. Crim. R. 35(b). See *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995) (recognizing that this Court may affirm on the basis of a different rationale than that which was articulated by the trial court).